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1 UNITED STATES PATENT AND TRADEMARK OFFICE
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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* BRIAN ALAN GROVE,
9 ZAK JAMES EDSON,
10 STEVE GROVE,
11 and
12 ANDREW LEIGH SANDLER
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15 Appeal 2009-003235
16 Application 10/750,052
17 Technology Center 3600
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20 Decided: September 23, 2009
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24 *Before* MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU
25 R. MOHANTY, *Administrative Patent Judges*.

26
27 CRAWFORD, *Administrative Patent Judge*.
28
29

30
DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 15-21, 51-57, 87-93, and 116-119. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented systems and methods for facilitating price negotiations between a buyer and a seller by a network-based commerce system (Spec. [0002]).

Claim 87 under appeal is further illustrative of the claimed invention as follows:

87. A method to facilitate operation of a network-based commerce system, the method including:
adjusting a predefined reserve price associated with a listing of an item during a network-based auction price-setting process; and
notifying automatically one or more bidders of the adjustment of the reserve price.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Holden	US 2001/0032175 A1	Oct. 18, 2001
Nishi	US 2002/0161691 A1	Oct. 31, 2002
Herschkorn	US 6,691,094 B1	Feb. 10, 2004

The Examiner rejected claims 15-18, 21, 51-54, 57, 87-90, 93, and 116-119 under 35 U.S.C. § 103(a) as being unpatentable over Nishi and Holden; claims 19-20, 55-56, and 91-92 under 35 U.S.C. § 103(a) as being unpatentable over Nishi, Holden, and Herschkorn.

We AFFIRM.

ISSUES

Did the Appellants show the Examiner erred in finding that a combination of Nishi and Holden renders obvious notifying one or more bidders of the adjustment of the reserve price, as recited in independent claims 15, 51, 87, and 116, because Holden teaches away from notifying bidders of the reserve price?

Did the Appellants show the Examiner erred in finding that a combination of Nishi and Holden renders obvious notifying one or more bidders of the adjustment of the reserve price, as recited in independent claims 15, 51, 87, and 116, because the Examiner has not provided an adequate reason for modifying Nishi?

FINDINGS OF FACT

Specification

Appellants invented systems and methods for facilitating price negotiations between a buyer and a seller by a network-based commerce system (Spec. [0002]).

Nishi

Nishi discloses buyers' auction data are exchanged with auction center equipment 6 and the organizer equipment 12 via the Internet by using equipment 20 such as personal computers (the buyer equipment). The buyers' equipment 20 and the assessors' equipment 16 are connected to the Internet 8 and the auction center equipment 6. Data submitted at the buyer

1 equipment 20 is sent to and shown on the assessor equipment 16. Data
2 submitted at the assessor equipment 16 is sent to and shown on the buyer
3 equipment 20 ([0071]).

4 Screens 34 on organizer equipment 12, assessor equipment 16, and
5 buyer equipment 20 include information field 38 and input area 40. Buyers
6 can enter their bid on input area 40. Assessor equipment and buyer
7 equipment 20 show the status of bidding, and “reserve price modification” is
8 requested and the session status is shown on assessor equipment ([0097];
9 Figs. 5-6).

10 The assessor and sellers can click on the “reserve price modification
11 button” on the input area 40 ([0101]).

12 When the reserve price is modified, the goods are sold at the bidding
13 price that the reserve price modification specified. Then the current session
14 and cycle is closed ([0172]).

15

16 *Holden*

17 Holden discloses an on-line auction system with an opening price that
18 determines the starting price of the auction. The reserve price is a bidding
19 limit used to prevent a sale at a catastrophically low price. The opening
20 price is shown on the bidding screen. The reserve price is not shown
21 ([0028]).

22 Throughout the auction, a variety of auction events will trigger
23 automatic e-mail messages to the users authorized for that auction ([0082];
24 Claim 28).

1 PRINCIPLES OF LAW

2 *Obviousness*

3 A reference may be said to teach away when a person of ordinary
4 skill, upon examining the reference, would be discouraged from following
5 the path set out in the reference, or would be led in a direction divergent
6 from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551,
7 553 (Fed. Cir. 1994).

8 One cannot show non-obviousness by attacking references
9 individually where the rejections are based on combinations of references.
10 *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

11
12 *Claim Construction*

13 While the specification can be examined for proper context of a claim
14 term, limitations from the specification will not be imported into the claims.
15 *CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1231 (Fed. Cir.
16 2005).

17
18 ANALYSIS

19 *Teaching Away*

20 We are not persuaded of error on the part of the Examiner by
21 Appellants' argument that a combination of Nishi and Holden does not
22 render obvious notifying one or more bidders of the adjustment of the
23 reserve price, as recited in independent claims 15, 51, 87, and 116, because
24 Holden teaches away from notifying bidders of the reserve price (App. Br.
25 10-16; Reply Br. 5-12). Holden discloses that the reserve price is not shown
26 on the bidding screen. However, the fact that the reserve price is not shown

1 does not mean Holden teaches away from showing the reserve price. A
2 teaching away requires discouragement. *See In re Gurley*, 27 F.3d at 553.
3 The cited portions of Holden do not discourage showing the reserve price.
4 Indeed, independent claims 15, 51, 87, and 116 only recite notifying one or
5 more bidders of the *adjustment* of the reserve price, and not notifying the
6 one or more bidders of the reserve price itself. *See CollegeNet, Inc. v.*
7 *ApplyYourself, Inc.*, 418 F.3d at 1231.

8

9 *Adequate Reason for Modifying*

10 We are not persuaded of error on the part of the Examiner by
11 Appellants' argument that a combination of Nishi and Holden does not
12 render obvious notifying one or more bidders of the adjustment of the
13 reserve price, as recited in independent claims 15, 51, 87, and 116, because
14 the Examiner has not provided an adequate reason for modifying Nishi
15 (App. Br. 10-16; Reply Br. 5-12). Nishi discloses that assessor's equipment
16 16 includes a "reserve price modification button." Data submitted at the
17 assessor's equipment 16 is sent to the buyer's equipment 20. While it is true
18 that Nishi does not specifically disclose that reserve price modification is
19 sent to the buyer's equipment 20, Holden discloses that a variety of auction
20 events will trigger automatic e-mail messages to the users authorized for that
21 auction. The reserve price adjustment/modification may be such an event, as
22 one of ordinary skilled in the art would set automatic triggers to
23 automatically notify one or more bidders about change in the reserve price
24 because this enables efficient and real time communication of change in the
25 ongoing auction terms, even including a termination of an auction due to an
26 adjustment of the reserve price and which all bidders should know (Ex. Ans.

6-8). Accordingly, all arguments that Nishi alone does not disclose the
aforementioned aspects of independent claims 15, 51, 87, and 116 are
unpersuasive, because it is the combination of Nishi and Holden in view of
the above rationale that renders obvious the aforementioned aspects. *See In
re Keller*, 642 F.2d at 426.

The Appellants assert that Nishi does not disclose disclosing the
reserve price to the buyer's equipment 20. Once again, however, such a
recitation is not set forth in the claims. *See CollegeNet, Inc. v.
ApplyYourself, Inc.*, 418 F.3d at 1231. Independent claims 15, 51, 87, and
116 merely recite notifying one or more bidders of the *adjustment* of the
reserve price, and not notifying the one or more bidders of the reserve price
itself. The rationale for modifying Nishi to notify the one or more bidders
about the change in reserve price has been established by the Examiner as
set forth above.

The Appellants also assert that the Examiner's proffered combination
of Nishi and Holden does not render obvious continuing the auction after the
reserve price has been modified/adjusted, thus defeating the Examiner's
rationale for combining Nishi and Holden. However, such a recitation is not
set forth in the claims. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d
at 1231. Independent claims 15, 51, 87, and 116 merely recite notifying one
or more bidders of the adjustment of the reserve price, not that the auction
must subsequently continue. Accordingly, a termination of the auction still
meets the aforementioned recitations, as long as the one or more bidders are
informed of the modification/adjustment of the reserve price that terminates
the auction.

CONCLUSION OF LAW

On the record before us, Appellants have not shown that the Examiner erred in rejecting claims 15-21, 51-57, 87-93, and 116-119.

DECISION

The decision of the Examiner to reject claims 15-21, 51-57, 87-93, and 116-119 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

hh

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